Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.

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Copyright Royalty Board

In the Matter of

MECHANICAL AND DIGITAL PHONORECORD DELIVERY RATE ADJUSTMENT PROCEEDING

Docket No. 2006-3 CRB DPRA

CORRECTED REBUTTAL TESTIMONY OF

TERRI SANTISI

President, T. Media Services, International

PUBLIC VERSION

May 2008

ATTACHED NOTES

ORIGINAL

CORRECTED TESTIMONY OF TERRI M. SANTISI

I. INTRODUCTION AND RELEVANT WORK EXPERIENCE.

I am the President of T. Media Services, International, a strategic consulting firm specializing in all aspects of media and entertainment. I write this report at the request of the RIAA to respond to several of the assertions that have been made by the National Music Publishers Association, Inc. ("NMPA"), the Songwriters Guild of America ("SGA"), and the Nashville Songwriters' Association International ("NSAI") (collectively, the "Publishers") in the current CRB proceeding.

I have spent virtually my entire professional career in the media and entertainment fields and have had extensive experience with both the recorded music and the music publishing sectors of the industry.

I started my career at the accounting firm of Ernst & Young. I was at Ernst & Young for 13 years and as a partner led the Media Industry Group. I also served as the coordinating partner for EMI Music Worldwide, the American Society of Composers and Publishers (ASCAP) and the NMPA. While at Ernst & Young I developed a sophisticated formula for the valuation of music publishing copyrights which enabled potential purchasers of those rights to obtain an appropriate measure of their value. I also led financial due diligence of several music and music-related companies, including SBK Music Publishing (formerly CBS Music Publishing) by Thorn EMI Plc (a roughly $300 million transaction) and led financial due diligence with respect to the sale of Chappell Music Publishing by an investor group to Warner Music (a roughly $200 million transaction).

From 1989 to 1992 I served as the Senior Vice President and Chief Financial Officer for EMI Music Publishing Worldwide/SBK Records. At EMI Music Publishing ("EMI MP") I was responsible for integrating the former CBS Songs, another music publisher, and leading the financial operations of the newly merged company. In that position I was responsible for corporate development (mergers and acquisitions) and all finance operations including royalties, licensing and administration, financial planning and analysis. In addition, I served as the financial partner to the co-Chairmen of the company to assist on all global growth initiatives. I also negotiated several major catalog transactions, including the acquisition of Filmtrax Music and a long-term administration deal for the Jobete Music catalog. In the course of my work I routinely reviewed royalty statements and other licensing documents and became familiar with all aspects of the royalty rate structure of music publishers and songwriters.

From 1992 through 1998 I was the Executive Vice President and General Manager of the EMI-Capitol Music Group, North America. At EMI Music I led strategy development and oversaw day-to-day operations for nine North American record labels, with responsibility for the sales, marketing, and distribution operations as well as the manufacturing organization. I was also responsible for structuring major artist and promotion deals and evaluating the viability of new business opportunities. Among others, I was responsible for the development and management of multimedia marketing campaigns involving artists such as Garth Brooks, Tina Turner and Roxette. I also renegotiated the rights to the Beatles' BBC Tapes and their "Anthology" audio and video series, greatly increasing the revenue-generating potential of those products.

Subsequent to my work with EMI Music, from 1999 through 2005 I was a Partner at KPMG and leader of their Media and Entertainment Practice. During my tenure at KPMG, I led specific client projects in the media industry, including a business transformation and strategic assessment of a major music association, transaction advisory work for several media companies (primarily in the music sector), advising on transactions from $100 million to in excess of $1 billion, and also led the Sarbanes Oxley initiative for one of the major recorded music companies.

After leaving KPMG, I was the Chief Financial Officer for Interpublic Media, a division created in 2006 to consolidate the media planning and buying businesses of The Interpublic Companies. I then served as the Executive Vice President, Chief Financial Officer and Chief Administrative Officer for IMG, a major sports, entertainment and media company. Upon leaving IMG in 2007 I formed T. Media Services, my own consulting firm.

In addition to the above employment, I have also made a number of professional contributions in the area of media and entertainment. I partnered with the World Economic Forum to assist in the annual media governors meeting agenda from 2000-2005, and I remain involved with that organization today. In the course of my work with the World Economic Forum I contributed to their digital ecosystem study and authored papers relating to the impact of private equity firms in the media and entertainment industry, collaboration between information technology, telecommunications and media entertainment, boundaries of global regulation in the media and entertainment industry, and challenges to creating value in media and entertainment. In addition, I have authored position papers on the current issues and future implications of various sectors in media entertainment, including advertising, intellectual property protection, and the consumer in media and entertainment.

I have been a certified public accountant in the State of New Jersey since 1979. A copy of my resume is attached at the Appendix to this report.

II. SUMMARY OF CONCLUSIONS.

Throughout their direct case, the Publishers have repeatedly made a number of inaccurate or misleading statements about the relative contributions made, and risks taken, by music publishers and record companies.

First, music publishers say they have a significant role in creating music and making it available to the listening public.[1] While music publishers do make certain contributions to the creative process, the contributions of the record labels are many times greater. In terms of dollars spent, it is the record labels that provide the vast majority of the investments in the areas of artist & repertoire (A&R), marketing and promotion, recording cost, talent advances, tour support, and the like. The contributions of music publishers in these areas do not even come close.

Second, music publishers say that they take significant risks with their investments in songwriters.[2] As I will show in this report, any risks taken by music publishers are minimal compared to the risks taken by record labels. This is in part simply a function of their lower spending. But it is also because music publishers, unlike record labels, have access to a wide range of revenue streams that insulate them from periodic downturns in one form of licensing or another. Moreover, music catalogs are durable assets that retain their value for many years with a minimum of continued financial expenditure. That is why music catalogs have in recent years become a widely sought-after investment due to their long-term, annuity-like nature.

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[1] CO Trial Ex. 11 (Israelite WDT) ¶¶ 13-19; CO Trial Ex. 3 (Faxon WDT) ¶¶ 9-38; CO Trial Ex. 24 (Firth WDT) ¶¶ 17-52; CO Trial Ex. 8 (Robinson WDT) ¶¶ 27-57; CO Trial Ex. 13 (Peer WDT) ¶¶ 10-46

[2] CO Trial Ex. 11 (Israelite WDT) ¶ 18; CO Trial Ex. 3 (Faxon WDT) ¶ 17; CO Trial Ex. 24 (Firth WDT) ¶ 29; CO Trial Ex. 8 (Robinson WDT) ¶ 51; CO Trial Ex. 13 (Peer WDT) ¶¶ 19-20

Third, music publishers contend that an increase in the mechanical royalty rate is necessary to enable them to make continued investments in music.[3] But, as I will show, this is not so. Mechanical royalty revenues are but one of many streams of income that the music publishers enjoy. Indeed, as my analysis will show, under the RIAA's proposal to reduce the present mechanical royalty rate on most products to a level of 9 percent of wholesale, music publishers would still enjoy healthy profits and margins -- more than enough to cover their overhead and to continue talent advances and carry out other forms of investment. By contrast, adopting the rate increase proposed by the Publishers will simply swell the music publishers' already substantial coffers while depriving record labels of net revenues that are essential if they are to continue making investments in an already difficult economic environment.

Finally, the music publishers have testified that digital distribution is the cure to the record labels' woes, suggesting that the savings record companies will eventually achieve in lower distribution and manufacturing costs will offset the losses they are experiencing as a result of declining sales revenues.[4] In fact, the shift to digital has created tremendous risks for record companies, who have made and are continuing to make massive investments in order to transform their businesses in a time of great uncertainty about the future of the music industry as a whole. And while everybody has suffered from digital piracy to some extent, it is the record companies that are making most of the investments and therefore that are bearing the brunt of the increased risks. Music publishers, by contrast, simply continue to do in the digital world what they have always done in the physical world, which is to license a product and run what is, in effect, an annuity business.

[3] CO Trial Ex. 11 (Israelite WDT) ¶¶ 13, 17, 48; CO Trial Ex. 24 (Firth WDT) ¶ 62; CO Trial Ex. 8 (Robinson WDT) ¶¶ 27, 57; CO Trial Ex. 13 (Peer WDT) ¶¶ 51, 59

[4] CO Trial Ex. 3 (Faxon WDT) ¶¶ 9-38; CO Trial Ex. 15 (Murphy Report) ¶¶ 38-50

III. THE MUSIC PUBLISHING BUSINESS INVOLVES SUBSTANTIALLY LESS RISK THAN THE RECORDED MUSIC BUSINESS.

The music publishers have sought to convince this Court that they make substantial investments, and take substantial financial risks, in the creation and distribution of music. To their investors, stockholders, and the general public, however, the music publishers say something completely different, describing themselves as a low-risk business that primarily collects the cash generated from the intellectual property they own. As BMG Music Publishing ("BMG MP") put it in a 2006 prospectus, music publishing is a "highly profitable business model with high margin, annuity-like cash flow generation."[5] Based on my personal knowledge of the music publishing business and my review of the music publishers' documents provided in discovery, this statement in the BMG prospectus is certainly accurate.

A. Music Publishers Acquire the Rights to Musical Works In Ways That Minimize Their Risk.

Music publishing companies make money by licensing the use of a piece of intellectual property -- the musical work or song. Music publishers typically acquire musical works in one of three ways:[6]

First, music publishers acquire existing catalogs of musical works with existing and predictable revenue and cash flow streams, usually in a particular genre such as pop or country. The acquisitions of these catalogs carry little risk because their revenue-producing capacity can readily be analyzed prior to purchase, allowing a purchase price to be simply calculated. As a Sony/ATV presentation explained, [[redacted]

[5] RIAA Ex. 51 (CO05006812), at 05006826

[6] [[redacted]]

[redacted]][7]

Second, music publishers enter into administration or short term catalog deals. In these deals, the publishers take an already-existing catalog -- that is, a catalog that is already earning money -- and agree to exploit the musical works in that catalog (and handle the collection of the royalty payments) in exchange for a share of the profits from that catalog. Such arrangements have a very steady and predictable revenue stream and the music publisher will retain these rights for the term of the deal or until an advance is recouped. Administration deals can also provide the publisher with an inside track on the acquisition of that catalog should it be placed for sale in the future.[8] Although the music publishers spend significant sums to acquire the rights to a catalog of existing works, the risks associated with this investment are small.

Third, music publishers sign new talent deals with writers, artists and/or producers. Like the record companies, music publishers usually pay an advance to a new songwriter, and like the record companies, music publishers are betting that the songwriter will succeed and their investment can be recouped. Although the music publisher may make this investment before any songs have been written or selected for recording by a record company, in many cases, publishers wait until a songwriter has a record deal in place. (And they also give larger advances to writers with record company deals. For example, [[redacted]][9]) In the case

[7] RIAA Ex. 133-RR (CO07007193), at 07007205

[8] RIAA Ex. 133-RR (CO07007193), at 07007205

[9] RIAA Ex. 129-RR (CO08000273), at 08000303

of new songwriters, they frequently wait until a songwriter has a commitment from an artist to have his song recorded before they sign the songwriter and pay an advance. And in the case of singer/songwriters, it is sometimes the case that the music publisher does not sign a deal until the singer/songwriter not only has a record contract, but has already recorded an album that is ready for release. In other words, music publishers generally invest in new talent only when they know that a record company is already planning to invest many multiples more in A&R, marketing, etc. -- investments that will ultimately be to their benefit.

There is little risk, therefore, that the music publisher investments will not pay off. When music publishers buy existing catalogs of musical works, or enter into administration deals, they are acquiring assets (or rights to assets) that already are generating predictable revenue streams. Only when the music publishers acquire musical works by signing new talent deals with songwriters to whom they pay advances is there any appreciable risk. Yet even here, the risk is often minimized by the fact that the record company has already committed to produce and sell at least one album by the singer/songwriter, and the music publisher will earn mechanical royalties on each and every one of the albums sold, regardless of whether the record company ever makes a profit on the album. Moreover, it is worth noting that in all three circumstances, the costs to the music publishers increase very little. The incremental cost of adding a catalog or a new songwriter (or 50 new songwriters) is principally the cost of any advance on royalties; in contrast, if a record company seeks to add another performer or make a new album, it will incur very substantial additional costs, including A&R, marketing, and other costs.

The publishers' ability to reduce the risk of their investments stands in contrast to the record companies. The record companies usually must make their investment at a time when there is no way to know whether the investment will prove successful. The record companies invest in the artist, provide the funds for the artist to make and produce the sound recording (including mixing, mastering and other expenses involved in the creation of the sound recording), provide the funds necessary to bring the sound recording to market both in the digital and physical world, and carry out the manufacturing and distribution of the sound recording -- all this before anyone knows whether it will be popular with the public. The risk confronting the record companies at the point where they make their investment, therefore, is significantly greater than the risk confronting the publishers.

B. The Investments Made By Music Publishers Are Smaller, and Therefore Less Risky, Than The Investments Made By Record Labels.

Once the music publishers have made an investment to acquire the rights to musical works, the investment needed to exploit these rights is modest. Both the music publishers and the record companies pay advances to songwriters and/or artists, but the record companies make additional and very substantial investments to produce the recording, market it in the physical and digital space, and distribute and manufacture it. It is the record companies, rather than the music publishers, who bear the lion's share of the costs that turn intellectual property rights into revenues.

The disparity of investments between music publishers and record companies can be usefully illustrated by comparing the investment profile of EMI MP, the most profitable music publisher (and until last year's merger of BMG MP and Universal Music Publishing Group, the largest), with Universal Music Group, the largest and most financially healthy recorded music company. EMI MP has approximately [[redacted]] percent of the market for music publishing and UMG has about [[redacted]] percent of the market for sound recordings. I understand that Roger Faxon, EMI MP's CEO, has testified that EMI MP has a total A&R budget in the US of more than [[redacted]], pays annual gross advances in the US averaging close to [[redacted]], and makes expenditures on various development and promotional activities of [[redacted]][10] But those figures pale in comparison with the comparable figures from UMG. For A&R, UMG had gross spending in 2006 (including A&R expenses and gross advances) of [[redacted]] -- many times more than EMI MP.[11] As for marketing, UMG had [[redacted]] in marketing expenses in 2006, dwarfing EMI MP's development budget.[12]

Moreover, even these figures understate the comparison because Mr. Faxon's figures for A&R and developmental activity spending include not only third party expenses but also all overhead expenses (such as salaries and rent) that could be allocated to these activities.[13] If you were to make a true apples to apples comparison, you would have to count UMG's A&R overhead of [[redacted]] and its marketing overhead of [[redacted]],[14] plus whatever portion of UMG's [[redacted]] general and administrative overhead is allocable to the management and support of their A&R and marketing activities. And, of course, UMG incurs all of the distribution and marketing costs associated with both physical and digital distribution -- expenses that are effectively $0 for EMI MP. And even this comparison overstates the relative investments and risks of the music publishers compared to record companies. This is because EMI MP's figures for advances, as with all the music publishers, includes advances for administration deals as well as pipeline advances to songwriters. As I noted above, advances of this nature have almost no risk as the music publisher is advancing against a known revenue stream.

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[10] CO Ex. 3 (Faxon WDT) ¶¶ 12, 16, 22

[11] RIAA0020488

[12] RIAA0020099

[13] Faxon WDT Exs. 1, 5

[14] RIAA0020099

The difference in the level of investment also can be seen in some of the examples the music publishers themselves have brought to the Court's attention. Throughout their testimony the publishers make numerous claims about the singer-songwriters whose careers they claim to have boosted in the form of advances, songwriting assistance, and other forms of support. Two such examples are James Blunt, a singer-songwriter with EMI MP, and Lance Miller, a singer-songwriter with Famous Music Publishing. I have examined the record labels' experiences with both of these artists and, as it happens, I believe that these two examples precisely illustrate the kind of investments that record companies often must make, and the range of risks that they face.

In the case of James Blunt, Roger Faxon of EMI MP emphasizes that his company provided Mr. Blunt with some [[redacted]] of advances (in addition to songwriting assistance and other forms of promotional support). While that is not an inconsiderable sum of money, it pales in comparison with the support given to Mr. Blunt by just one of his record labels, Atlantic Records (Atlantic, a Warner label, and Custard Records, an independent record company, have signed James Blunt jointly). In the United States, Atlantic spent [[redacted]] for a marketing campaign in connection with Mr. Blunt's breakout album, Back to Bedlam. This is in addition to [[redacted]], and it does not even take into account the expenditures by Atlantic's overseas affiliate in the UK, where Blunt first broke out. Overall, Mr. Faxon's [[redacted]] advance compares poorly to the [[redacted]] spent by the record company on just the two activities described above.

In the case of James Blunt, the record company's investment paid off -- to the benefit of both the record company and the music publisher. But that is often not the case, as another publisher example demonstrates. I understand that Mr. Robinson of Famous testified in his written statement that he was "eagerly anticipating" the release of an album by Lance Miller in

Because the music publishers invest less (and have more revenue streams against which to recoup their costs, as I explain below), music publishers recoup their advances far more often than record companies. For example, one of the largest and most profitable music publishers, EMI Music Publishing, routinely recoups [[redacted]] percent of its advances. For the eight-year period from FY 2000 through FY 2007, EMI MP made [[redacted]] in gross advances and recouped a total of [[redacted]], or [[redacted]] of the total gross advances. In that same eight-year period, EMI Music Publishing wrote off [[redacted]] in unrecoupable advances.[17] By comparison, during the eight-year period 1999-2006, UMG wrote off a total of [[redacted]], or an average of [[redacted]] million per year -- more than [[redacted]] the amount EMI MP was forced to write off.[18] One of the reasons for this disparity is that the above EMI MP figures for advances include advances for administration deals as well as pipeline advances to songwriters. As I noted above, advances of this nature have minimal risk as the music publisher is advancing against a known revenue stream.[19]

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[17] RIAA Trial Ex. 8 (CO04024775), at 04024778, 04024792

[18] RIAA0020435; RIAA0020099

[19] I understand that Roger Faxon, EMI MP's CEO, has testified that EMI MP has only a "small success rate" with its advances. (CO Trial Ex. 3 (Faxon WDT) ¶ 17.) That is, of course, clearly contradicted by the numbers I have cited above. Mr. Faxon apparently based his testimony on the fact that as of the end of 2005, EMI MP had approximately [[redacted]] in outstanding advances in the U.S., while its internal accounting treated [[redacted]] of this as "provisions", or unlikely to be recouped. But this is an extremely misleading comparison. As Mr. Faxon admitted in his testimony on the stand, [[redacted]]. (Tr. 1/30/08 (Faxon) 602:5-15.) A comparison between these two figures is simply meaningless because it says nothing about the advances or recoupments in a given year. Indeed, from FY2000 to FY2006, during a period when EMI MP extended and recouped over [[redacted]] in advances, the level of "provisions" on EMI MP's books [[redacted]]. (RIAA Trial Ex. 8 (CO04024775), at 04024792.)

2007.[15] As Mr. Robinson testified, Famous did not discover Mr. Miller and Famous did not arrange for him to sign with a record label. Nevertheless, because Famous had signed Mr. Miller, Famous stood to make money when Warner Brothers Records invested the money in an EP and full album for Lance Miller. While Famous invested [[redacted]] in advances to Mr. Miller,[16] Warner Music spent [[redacted]] -- to market Mr. Miller's first release. Warner also paid recording costs of [[redacted]], as well as additional costs of manufacturing. Unfortunately, the marketplace did not respond positively to the EP released by Warner as both Warner and Famous had hoped. Warner will not recoup its advances, and estimates that in total it will lose roughly [[redacted]] on the project. While Famous may well have lost money too, it clearly risked far less and therefore lost far less. (It is worth noting that the costs of making and marketing records by Nashville artists is generally far less than "Top 40" artists; therefore, the potential risk to the record companies when launching a new "Top 40" artist can be even higher than the Lance Miller example illustrates.)

The Blunt and Miller examples illustrate a more general truth: Music publishers' investments are usually significantly less than the investments by the record companies. The disparity in the size of the investment is because the record company provides the funds to make the sound recordings and to market and promote the resulting sound recordings. It is the record company that pays for all the recording, producing, mixing, mastering, marketing, promotion and other expenses involved in creating, distributing and marketing the sound recordings. The investments by music publishers, on an album by album basis, are simply smaller.

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[15] CO Ex. 8 (Robinson WDT) ¶ 46

[16] CO02005464, at 02005468

The other music publishers, too, appear to bear little if any risk with their advances. For example:

BMG MP: BMG MP's financials show that their writeoffs for unrecouped advances have been extremely small. In 2002, BMG MP wrote off about [[redacted]] in advances.[20] From 2003 through 2006, as shown on Table A, the only other years for which BMG MP provided such data, the company wrote off [[redacted]]. BMG MP's plan documents for 2006-2010 estimate writeoffs in the same neighborhood for that entire period [[redacted]].[21] Moreover, figures for total advances and recoupments, to the extent BMG MP has provided them in discovery, show that BMG MP appears to recoup a large portion of the advances it provides. In fact, from 2002-2005, BMG MP's US advances totaled [[redacted]], while its recoupments were [[redacted]], or [[redacted]] of advances during that time period.[22] Although BMG MP did not provide projected advances and recoupments for the US company, projections on a worldwide basis for the years 2006-2010 are that the company will make a total of [[redacted]] in advances and recoup [[redacted]] of that -- a [[redacted]] percent success rate.[23]

Sony/ATV: As indicated on Table A, Sony/ATV's financials show that it has written off roughly [[redacted]] in advances each year. Sony/ATV did not provide data by

[20] CO05004735, at 05004739

[21] RIAA Ex. 130-RR (CO05005927), at 05005948

[22] CO05004735, at 05004747 (2002); CO05005398 (2003-2005)

[23] RIAA Ex. 51 (CO05006812), at 05006925. I am aware that Mr. Firth has testified that from 1987 through 2005 BMG MP has written off approximately [[redacted]] of its advances. CO Ex. 3 (Faxon WDT) ¶ 29. BMG MP did not provide documents showing its advance payments and recoupments prior to 2002, but [[redacted]]

which annual levels of advances and recoupments could be calculated, but it did provide a document with forecast figures for 2007 and a budget for 2008. That document showed that Sony/ATV forecast making [[redacted]] in new advances and recouping [[redacted]] in previous advances in 2007, and that it budgets making [[redacted]] in advances in 2008 and recouping [[redacted]], for a total recoupment rate over those two years of [[redacted]].[24]

Universal Music Publishing Group (UMPG). As shown in Table A, UMPG [[redacted]]. In addition, its 2006 forecast and 2007 plan documents [[redacted]].[25] UMPG's documents show that from 2000 through 2005, they spent a total of [[redacted]] in advances, while recouping a total of [[redacted]] -- thus [[redacted]].[26] The same pattern holds if one takes 2006 forecast and 2007 budget figures into account.[27]

Warner/Chappell: Warner/Chappell did not provide consistent financial data for its US operations, but on a consolidated (worldwide) level as shown on Table A the company had advance writeoffs between [[redacted]], between 2000 and 2006. [[redacted]] In addition, investor documents prepared by Warner/Chappell emphasize that on a worldwide level, [[redacted]]

[24] CO07006752, at 07006753

[25] CO09008348, at 09008404

[26] CO09011621 at 09011662-09011664; CO09011388 at 09011435-09011439; CO09011259 at 09011310-09011313; CO09011509 at 09011558-1560; CO09011043 at 09011126

[27] CO09011043, at 09011126

[redacted]][28] As for U.S. advances, the sporadic documents that the Publishers produced show advance writeoffs in line, proportionally, with the worldwide advances, at [[redacted]].[29]

Of course, it is perfectly logical that the music publishers tend to have such high recoupment rates on their investments. As I noted above, many of the music publishers' advances are not given out to new talent, where the real risk lies, but for pipeline advances to songwriters and for catalog administration deals. Thus, it is no surprise that the music publishers tend to recoup a large portion of their investments.

C. Music Publishers Earn Multiple Revenue Streams as a Result of Record Company Investments.

For the music publishers, the investment that turns a song into a revenue-producing sound recording -- an investment mostly undertaken by the record companies -- produces multiple streams of revenue that the music publishers can look to in order to earn a return on their investment. The record companies, on the other hand, depend almost entirely on revenue from the sale of sound recordings.[30] That distinction between music publishers and record companies

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[28] RIAA Ex. 129-RR (CO08000273), at 08000294

[29] CO08001345, at 08001346; CO08005707, at 08005723

[30] Record companies recently have begun an attempt to alter this state of affairs by signing "360" deals, in which the record company and the artist agree that the record company will share in revenues from touring, merchandising, licensing and other sources of revenue, as well as sound recordings. It is not at all clear that this new business model will succeed, at least with established artists. If you are already an established "brand" with strong revenue streams from these other businesses, there is little incentive to give a portion to the record company. Indeed, as one analyst recently noted, [[redacted]] (Goldman Sachs, Company Update: Warner Music Group Corp.,

is particularly important in an era of rampant piracy. Piracy significantly erodes the sound recording sales on which the record companies rely. But while piracy impacts the mechanical royalties earned by music publishers, it does not have as much effect on the other revenue streams that are available to the publishers and unavailable to record companies.

Music publishers earn money from musical works in at least the following ways:

- Reproduction (mechanical) royalties from the sale of CDs, digital downloads, cassettes and similar recordings that incorporate the musical work;
- Performance royalties from the performance of a musical work on radio, Internet streaming services, concerts and other public performances (e.g. in bars, restaurants, sporting events, and the like);
- Synchronization royalties from the use of musical works in movies, videos, television shows and commercial advertisements;
- Merchandising royalties from the use of musical works in toys, greeting cards and similar products;
- Revenues from the sale of sheet music (in print or digital scores) and from lyric services;
- Revenues from dramatic performances such as on Broadway, in shows, or other theaters (so-called Grand Rights)
- Royalties from production libraries.

Unconventional new ways for the music publishers to earn revenues off of their music catalogs seem to crop up every day. To take just one example, a recent initiative is the licensing of song lyrics for printing on designer clothing, such as jeans, other denim wear, and

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October 31, 2007, at 3.) To the extent that the record companies can persuade artists to sign 360 deals, the record companies generally have to compensate the artists with larger advances and make additional investments in other lines of business (such as t-shirt or concert promotion companies). In effect, the record companies must buy the additional revenue streams, which raises the level of investment by the record company and thus the risk that the investment will not be repaid.

accessories.[31] [[redacted]][32]

Two things of importance jump out from the breakdown of revenues for the publishers. First, the bulk of their revenues derive from the exploitation of sound recordings that were created by the substantial effort and investment made by record companies. In addition to mechanical royalties from the sale of sound recordings, substantial portions of the performance and synchronization royalties are the result of the investments made by record companies that work to the benefit of music publishers. Without record companies making sound recordings in the first instance, the performance and synch royalty revenue streams would be not possible. Indeed, many other revenue streams, including sale of lyrics and synchronization revenues that do not involve a pre-existing popular sound recording, are also largely the result of the efforts of record companies; people are likely to buy lyrics of sound recordings they have heard and enjoyed and sound-alike recordings are used in commercials and television shows because the original recording was popular.

Second, the availability of multiple revenue streams means that while record companies have been hard hit by music piracy, music publishers have avoided the worst of the piracy effect. Piracy does not affect the performance royalties that the music publishers earn (and the record companies, for the most part, do not). The music publishers explicitly recognize this fact. BMG MP has told potential investors that "the music publishing industry . . . is less dependent on technological change and is marginally less affected by unauthorized copying and unauthorized

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[31] <http://newsblaze.com/story/20060512131458000002.mwir/topstory.html> (announcing the release of "Lyric Jeans", a venture with UMPG and Warner/Chappell). (RIAA Ex. 125-RP)

[32] CO09008188, at 09008206

downloading. For example, although mechanical royalties have been negatively affected by the decline in CD sales, revenue from performance and synchronization have benefited from strong growth in the media landscape."[33] Similarly, Warner-Chappell told investors that [[redacted]][34]

More generally, the diversity of music publisher revenue streams serves to insulate the music publishers from downturns in any particular revenue source — an element of the music publishing business that the publishers have not hesitated to trumpet to their investors. For example, BMG MP told prospective purchasers that its "controlled catalogue of over one million musical copyrights generates stable, recurring revenues and predictable annuity-like cash flows."[35] Similarly, Warner-Chappell [[redacted]][36] Roger Faxon of EMI MP gave a public interview in which he noted that: "Compared to the recorded music industry, there is a different risk profile and a different return profile. The record business works on a high-risk, high-return model. We try to moderate that risk by looking for revenues not just from the sale of recorded music but also from other sources. So our risk profile is substantially better in that sense than for labels."[37]

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[33] RIAA Ex. 51 (CO05006812), at 05006846

[34] RIAA Ex. 126-RR (CO08006761), at 08006777

[35] RIAA Ex. 51 (CO05006812), at 05006836

[36] RIAA Ex. 126-RR (CO08006761), at 08006768

[37] RIAA Ex. 124-RP (CO04030074)

Those assertions are borne out by the music publisher financials. Table A presents the breakdown of music publishers' revenue by type from the year 2000 through the present, to the extent that information has been provided by the publishers in discovery. As this table shows, the music publishers' non-mechanical lines of revenue have risen dramatically in recent years. For example, [[redacted]] Similar trends are apparent for all of the major publishing companies.

Thanks to this diverse stream of revenues, music publishers expect to achieve healthy revenues in the future. Prior to its acquisition by UMPG, BMG MP projected that the performance revenues of its US operations would [[redacted]] between 2006-2010, while its synchronization revenues would [[redacted]] during the same time period (mechanical revenue, too, is projected to [[redacted]]).[39] Other music publishers have provided projections only for their worldwide operations, but they nonetheless show significant growth. For example, UMPG plan documents project [[redacted]

[38] Though even this decline may be overstated due to the manner in which EMI MP books its ringtone and mastertones revenues, as I will describe in a later section.

[39] RIAA Ex. 130-RR (CO05005927), at 05005948

[redacted][40] The Sony/ATV Fiscal 2008 budget presents [redacted][41] Warner/Chappell's investor documents do not break down by line of revenue but project that overall revenues will [redacted][42]

The same cannot be said, of course, for the record companies. In stark contrast to that of the music publishers, the vast majority of the record companies' revenues derives from the distribution of products that incur mechanical royalties. Unlike the music publishers, the record companies cannot expect that new forms of licensing income will, at any time in the near future, make up for the declining physical sales market.

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40 RIAA Ex. 128-RR (CO09010844), at 09010844

41 CO07004244; CO07004245, at 07004251

42 RIAA Ex. 129-RR (CO08000273), at 08000349. This is, of course, consistent with the views of outside analysts who predict continuing growth in the worldwide market for music publishing, even as times remain difficult for record companies. For example, Claire Enders, one of the publishers' witnesses, has forecast 2.2 percent compound annual growth in the worldwide music publishing industry. RIAA Tr. Ex. 27 (CO02001066), at 3. This is down from an estimate she had earlier done but still well above the 4.4 percent compound annual decline she forecast for global recorded music sales. Similarly, [redacted] RIAA Ex. 132-RR (CO07002638), at 07002661.

D. Contrary to the Publishers' Assertions, There Has Been No Steep Decline in Mechanical Royalties In Recent Years.

I understand that a common refrain of the music publishers is that they need a higher mechanical royalty in order to compensate them for a decline in mechanical revenues. For example, David Israelite of the NMPA testified that the "steep slide" in the sale of CDs and other physical product since 1997 has produced "a corresponding and unexpected decline in mechanical royalties."[43] Other publishers have, I understand, given similar testimony.

However, the documents produced by the music publishers paint a very different picture. As Table A shows, three of those publishers -- EMIMP, Sony/ATV, and UMPG -- provided relatively consistent data from their US operations on mechanical revenues from 2001 through 2005. [[redacted]][44] The collected results from these three publishers hardly suggests a "steep" downward trend in mechanical royalties.

As for the other publishers, the trend is less clear. BMGMP produced information breaking down all of its revenues for only two years, 2004 and 2005 (as shown on Table A, the documents show [[redacted]]). Warner/Chappell produced only sporadic financials for its US operations but the documents it

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[43] CO Ex. 11 (Israelite WDT) ¶ 26

[44] [[redacted]]

did produce suggest that [[redacted]][45] It is similarly difficult to draw a conclusion about the year 2006, as only two publishers produced documents showing final breakdowns for their US operations in that year (the two publishers, EMI MP and Warner/Chappell, [[redacted]]).[46] Though less suggestive of a clear trend one way or another, the financials certainly do not support a clear pattern of sharply dropping mechanical revenues.

What's more, several of the publishers appear to be reporting their ringtone revenues as performance, synch, or other lines of revenues, rather than as mechanical revenues. For example, [[redacted]][48] This makes a difference in an analysis of mechanical revenue trends. For example, [[redacted]]

[45] Table A; CO08001386, at 08001396; CO08001345, at 08001345-46

[46] Table A; CO08005707

[47] RIAA Trial Ex. 8 (CO04024775), at 04024779

[48] Table A; CO05005709, at 07005713; CO08005707, at 08005709, 08005715

[redacted]][49]

Finally, I also understand that one of the reasons that Mr. Israelite gave for concluding that mechanical revenues have been in decline is that collections by the Harry Fox Agency, which collects mechanical royalties on behalf of many music publishers, have been in decline. I understand that at trial Mr. Israelite asserted that he drew this conclusion because he believed that HFA's share of mechanical royalty collections "to roughly be the same or even be larger" than it has been in the past.[50] However, the data I have collected from record companies suggests that this assumption is incorrect. [[redacted]] Thus, to the extent that Mr. Israelite has observed declining mechanical royalties flowing through HFA, that is likely because HFA is getting less of the mechanical royalty pie each year, rather than because the overall size of the pie is shrinking.[51]

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[49] CO08005707, at 08005709, 08005715

[50] Tr. Feb 5, 2008 (Israelite) pp 1437-38

[51] Moreover, I note that the Harry Fox Agency has just reported a royalty payout of $393.5 million in 2007 -- a four percent increase over 2006. http://www.harryfox.com/docs/2007HFARecapPR31708.pdf (RIAA Ex. 127-RP).

E. The Cents Rate Mechanical Royalty Serves to Reduce the Risks of the Music Publishers Compared to the Record Companies.

The changing economics of the music business, largely resulting from the move from a physical CD format to a variety of digital formats, has two effects on the record companies. First, the number of sound recordings sold is decreasing as a result of piracy and because digital singles sales are displacing the sales of CDs that typically contain ten to fifteen or more sound recordings. Second, the wholesale prices for sound recordings are declining because of the competition from "free" pirated sound recordings, and for other reasons testified to by various record company executives.[52]

As I indicated above, the music publishers' mechanical royalty revenues may be affected by the decline in the number of sound recordings sold (although other types of royalties, such as performance royalties, are unaffected). But the decline in wholesale prices for sound recordings has no impact on the music publishers, because of the current cents rate royalty structure. At present, music publishers earn the same mechanical royalty for a song regardless of whether the record company can sell the album containing that song for $10 or $6. To the extent that wholesale prices for sound recordings have dropped, therefore, it is the record companies that have borne the entire brunt of that change, and it is the record companies that bear the entire risk of further downward price pressure in the future, absent a change in the cents rate structure.

[52] For example, RIAA Ex. 57 (C. Finkelstein WDT), at 13-18; RIAA Ex. 68 (Bassetti WDT), at 8-11.

F. The Economic Life of Musical Works Often is Longer Than the Economic Life of Sound Recordings.

Music publishers enjoy the use of assets that can have a long life. Recording artists may re-record an old musical work from a music publisher's catalogs (called a "cover recording") which serves to revitalize the song in the market place and thus generate new revenue streams for the publisher and songwriter. For example, in 1992, singer Whitney Houston recorded a song called "I Will Always Love You" for the soundtrack to the movie entitled "The Bodyguard." Houston earned money from album sales as did her record label, but probably no one was happier than country singer Dolly Parton and her music publisher. Parton wrote "I Will Always Love You" more than 15 years earlier, in 1974, and she and her publisher collected performance royalties every time Whitney Houston's rendition of the song was played on the radio or otherwise performed in public (including at the Academy Awards and at concerts and bars), plus synchronization revenue for the movie, as well as the mechanical royalties on Houston's record sales.[53]

Investor documents and other presentations prepared by the music publishers on behalf of their worldwide operations repeatedly highlight the longevity of their catalog of songs. Warner/Chappell's investor documents contain [[redacted]

[53] See Edward Morris, "Nashville Scene: Movie Moves Parton Song To Top Again," Billboard, December 5, 1992. Indeed, this was the second time that a movie had revived interest in Parton's song -- it also hit number 1 in 1982, eight years after its initial release, when it was included on the movie soundtrack to "The Best Little Whorehouse in Texas." What's more, the release of Whitney Houston's version of the song also renewed radio interest in the original Dolly Parton version as well, thus leading to even more forms of revenue for Parton and her publisher. See Eric Boehlart, "Many Formats Love 'Always Love You,'" Billboard, January 30, 1993.

[redacted]][54] A presentation prepared on EMI MP's behalf by JP Morgan emphasized that: [[redacted]][55]

While music publishers have always been able to count on steady earnings from their music catalogs, there are signs that the life of music catalogs is extending even further than it used to. One notable example is BMG MP, which [[redacted]]"

Although record companies attempt to extend the economic life of their sound recordings through catalog sales, there is far less chance that an old sound recording will suddenly see a new

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[54] RIAA Ex. 129-RR (CO08000273), 08000335

[55] RIAA Ex. 131-RR (CO04031209), at 04021213

[56] CO05004735, at 05004745-46

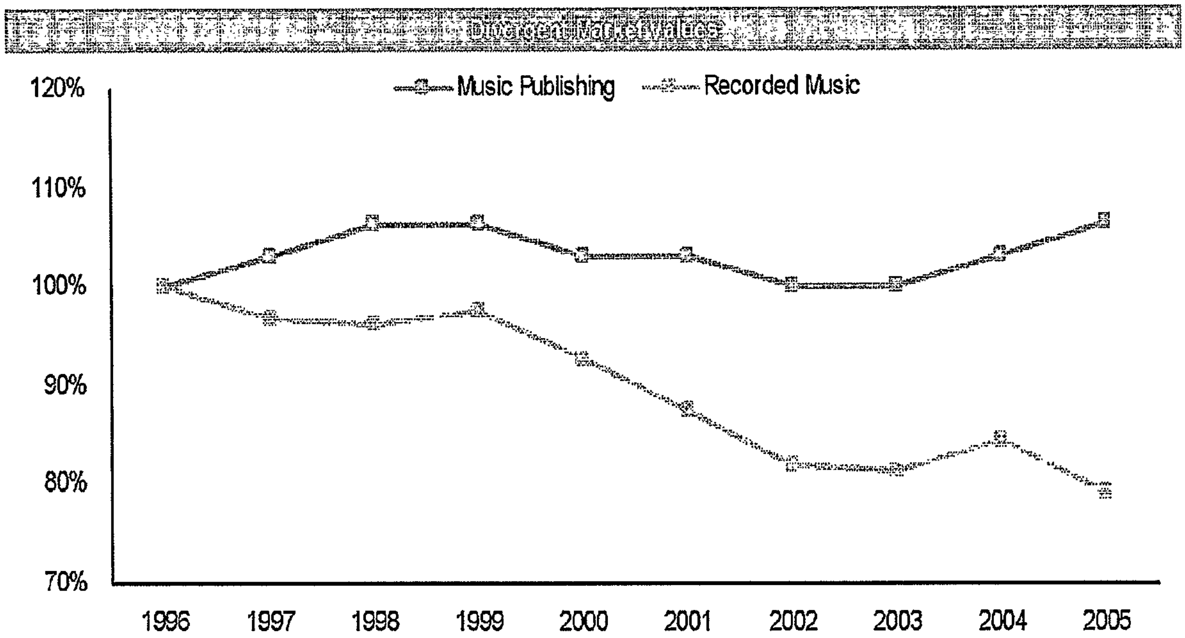
surge in sales years after its initial release. With the advent of digital formats, consumers often "rip" their CDs onto their new devices, reducing the need to go out and buy new copies of old sound recordings, to the detriment of the record companies' catalog business. This is quite a contrast to earlier format transitions, such as the switch from LP's to CD's, in which consumers typically made new purchases in order to update their music catalogs.

G. The Difference in the Costs and Risks of the Music Publishing and Recorded Music Businesses is Reflected in the Higher Valuations Placed on Music Publishing Businesses by Investors.

The differences between music publishers and record companies with respect to the relative risks and returns is reflected in how these businesses are valued in the marketplace. Buyers of these businesses place a far higher valuation on the music publishing assets than they do on the recording business assets.

As this chart which I have reproduced from a BMG MP investor presentation illustrates, the market values of the recorded music and music publishing business have diverged significantly since the late 1990s, when the mechanical royalty rate was last set:[57]

[57] RIAA Ex. 51 (CO05006812), at 05006846



Source: BMG management and IFPI.

Given the current market conditions and the differences between the two businesses, it is no surprise that this has happened. As I noted above, music publishing economics are attractive because the revenue streams are diverse and relatively stable and musical works copyrights tend to produce steady income streams each year. The costs are predictable, with the largest variable cost being the amount paid to the songwriters, and as set forth in Table A, the "net publisher's share" (that is, the amount retained by the publisher after writer payments) has remained relatively stable since 2001. Fixed costs are relatively low and are limited to small A&R costs and the majority of costs are in administration personnel and operating overhead. Continued improvements in royalty licensing and processing by both the publishers and their agents are likely to further reduce their administration cost basis in the future. Music publishing businesses therefore are an attractive investment, producing cash flow from acquired catalogs that falls directly to the bottom-line with little need to expend any money to produce those revenues.

Strategic buyers will use the net publisher's share (NPS) generated in the past three to five years and apply a multiple to determine a purchase price. As many observers have pointed out, those multiples have in recent years been extremely high. For example, an analysis prepared for EMI MP by JPMorgan in 2004 noted that [[redacted]][60]

Moreover, it appears that the NPS valuation of catalogs has been increasing in recent years. Claire Enders, who I understand was a witness for the publishers in the opening phase of trial, authored a report in 2004 in which she concluded that [[redacted]][61]

By contrast, although there are fewer transactions which can be compared, valuations on the recorded music side have been considerably smaller. For example, the JP Morgan analysis prepared on behalf of EMI noted that [[redacted]

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[58] RIAA Ex. 131-RR (04031209), at 04031213

[59] RIAA Ex. 131-RR (04031209), at 04031238

[60] RIAA Ex. 129-RR (CO08000273), 08000310

[61] Enders Analysis, Music Publishing 2004, April 2004, at 17

[redacted][62]

A good illustration of the difference in the way record companies and music publishers are valued can be seen from the analyst reports discussing sum of the parts analyses of EMI Group and Warner Music Group, which each include a music publishing company and a recorded music business. Because the recent purchasers of these companies did not pay separately for the music publishing and recorded music segments of the Company, we do not have a direct marketplace valuation for each. But outside analysts who have recently reviewed the market status of these companies have clearly understood that the music publishing components of those companies are more valuable than the recorded music sides.

In the case of Warner Music Group, for example, a recent Merrill Lynch report concluded that [[redacted]][63] A Goldman Sachs analysis [[redacted]][64] And a Bank of America analysis recently [[redacted]][65]

[62] RIAA Ex. 131-RR (CO04031209), at 04031213

[63] Merrill Lynch, Warner Music Group: Sell-Off Overdone, Jan. 11, 2008, at 3

[64] Goldman Sachs, Company Update: Warner Music Group Corp., October 31, 2007, at 7

[65] Bank of America, Warner Music Group Corp.: But This One Goes to Eleven, Nov. 29 2007, at 4

In the case of EMI, too, analysts value the publishing side of the company higher than the recorded music side. For example, a Bear Stearns analysis, produced by EMI MP in discovery, [[redacted]][66] Similarly, an analysis by UBS Investment Research, also produced in discovery, [[redacted]][67]

IV. DIGITAL DISTRIBUTION OF MUSIC HAS RENDERED THE RECORDED MUSIC BUSINESS RISKIER, BUT HAS LITTLE IMPACT ON THE MUSIC PUBLISHING BUSINESS.

The music publishing business has always been a safer, lower cost investment than the recorded music business. Trends in the music business over the past ten years have combined to make the recorded music business riskier, however, while having substantially less impact on the music publishing business.

I understand that the music publishers have argued, to the contrary, that the record companies earn higher margins on digital music than they do on physical CDs, and therefore the digital age will improve the circumstances of the record companies. But even if it were true that digital sales have a higher operating margin than sales of physical CDs -- and I am not sure that it is -- the digital world may be one in which the record companies earn substantially lower revenues than they earned when all of their sales involved a physical product. As a result, the record companies may be forced to curtail their investment in A&R and marketing, which will constrain the number of sound recordings brought to the marketplace to the detriment not only of

[66] CO04031846, at 04031846

[67] CO04021825, at 04031839

the record companies, but also the songwriters who look to have their musical work brought to the marketplace by the record company.

A. Record Company Revenues Have Been Dropping As a Result of the Shift to Digital Sales.

In the United States, sales of CDs and other physical sound recording products peaked in 1999 at a total retail value of $14.6 billion. In 2006, the retail value of U.S. sales totaled $11.5 billion, having declined 6.2 percent from the prior year.[68] Revenues from the sale of recorded music through digital channels have grown, but have not come close to offsetting the decline in physical sales.

The most recent available data shows that this trend is continuing. Bertelsmann AG's Annual Report 2007, just recently released, indicates that revenues at the BMG division (which holds a 50 percent stake in Sony BMG) were €1.456 billion, or $2.255 billion -- down 27.8 percent from 2006. Income, measured as operating EBIT, dropped by 46 percent.[69]

The reasons for the decline are not hard to find. Piracy in the on-line world is a major culprit. In addition, however, the growth of digital distribution is a decidedly mixed blessing for the record companies, and likely contributes to the overall decline in recorded music sales. Consumers who acquire music through digital services -- chiefly through digital downloads -- can buy singles rather than albums more easily than they could when CDs and cassettes were the norm. In the past, if a consumer liked a particular hit song, he or she would buy an album containing that recording. The record companies simply did not distribute much of their music

[68] RIAA, 2006 Year-End Shipment Statistics

[69] http://www.digitalmusicnews.com/stories/031908sonybmg. In stark contrast, as I have noted above, the Harry Fox Agency, which administers mechanical licenses on behalf of the music publishers, has just reported a royalty payout of $393.5 million in 2007 -- a four percent increase over 2006. http://www.harryfox.com/docs/2007HFARecapPR31708.pdf (RIAA Ex. 127-RP)

in the form of CD singles. Now, however, the consumer may, and frequently does, buy a digital download of the hit single, and not the physical album. Because the record companies earned between $8 and $10 dollars in wholesale revenue for a CD album, but only $.70 for a digital single, the shift from sales of albums to sales of singles is contributing to the decline in revenues.

This shift means that, for the same marketing dollar (because record companies have traditionally used singles as a promotional tool to get consumers to buy albums), record companies are receiving far less revenue -- both from falling prices and from the shift to singles. The decline in revenue and prices hits record companies and music publishers in a much different fashion. Because it is the record company that incurs the costs of the creation, marketing, distribution, etc., and has the much higher fixed and variable costs per sound recording distributed, these declines mean there is less money to cover fixed costs and semi-variable costs, and those costs increase as a percentage of overall revenue. Because music publishers have little in the way of fixed costs and many other revenue streams, these declines have far less of an impact.

Looking forward, it is clear that sales of physical products will continue to decline, and sales of digital sound recordings will continue to grow. Beyond that, of course, nothing is certain. Most optimistic is Price Waterhouse, which predicts that the recorded music market will contract at a 0.4 percent compound annual rate from $11.5 billion in 2006 to $11.3 billion in 2011, but that double digit growth in digital distribution will begin to offset declines in physical distribution beginning in 2008.[70] Price Waterhouse represents the best-case prediction, however, and most analysts who report on the recording industry believe that it will be years before growth

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[70] Price Waterhouse, Global Entertainment and Media Outlook: 2007-2011, June 2007, p267

in digital sales offsets the decline in physical sales. For example, Citigroup recently observed that [[redacted]][71] Deutsche Bank recently noted that [[redacted]][72] A Pacific Crest analysis concluded that [[redacted]][73] And a recent Merrill Lynch analysis headlined [[redacted]] The report also noted that [[redacted]][74]

The music publishers have remained relatively unaffected by piracy and the sea change wrought by digital distribution. The music publishers' total revenues have remained stable during the time when record company revenues are dropping, and music publisher profit margins likewise remain stable. The layoffs, cost-cutting and restructuring that have re-shaped record company operations have not occurred at music publishers. Indeed, although EMI several months ago announced yet another round of restructuring that will reduce the global workforce in its recorded music business by 1,500 to 2,000 (out of a total of 5,500) according to Roger Faxon's testimony,[75] no layoffs or restructuring are anticipated at EMI's music publishing business.

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[71] Citigroup Global Markets, Company Focus: Warner Music Group, Nov, 29, 2007, at 9

[72] Deutsche Bank, Warner Music Group: Forecast and Target Update, Dec. 31, 2007, at 1

[73] PacificCrest, Morning Note, Jan. 23, 2008, at 5

[74] Merrill Lynch, Warner Music Group: Sell-Off Overdone, Jan. 11, 2008, at 4

[75] Tr. 1/30/08 (Faxon) 562

But shrinking revenues appear to be very much a part of the record companies' future due to the increasing use of digital formats, and that possibility poses a substantial problem for the record companies. More accurately, it poses at least three substantial problems, each of which I will discuss in turn below.

B. Declining Revenues Threaten Continued Investment in New Artists and Sound Recordings by the Record Companies, to the Detriment of All.

With sound recording revenues dropping and the need to invest in digital distribution growing, the record companies have struggled to sustain thin profit margins. The record company margins have been preserved only by repeated restructurings and cost-cutting measures undertaken over the past five or six years. The costs of these restructuring are "below the line" costs that do not appear on many P&Ls and ordinarily are not reflected when one attempts to calculate EBIDTA or other measures such as those referenced in the report of Helen Murphy[76] that the publishers submitted in the direct phase of this case. The reality is that many record companies are restructuring on an almost annual basis and the costs of those restructures are eating into the paper profits they have earned in recent years.

If the record companies were able to continually reduce their costs through additional restructurings as revenues declined, they could maintain their current small profit margins. But there is a limit to how much the record companies can cut costs without doing significant harm to both record companies and music publishers alike.

One way for the record companies to cut costs in order to offset declining revenues is to reduce artist rosters and the number of new releases each year. That has already occurred and likely will continue to occur. At some point, however, reducing artist rosters and new releases is

[76] CO Trial Ex. 15 (Murphy Report)

dangerous for the record companies. It is the conventional wisdom in the record industry that only one out of ten new releases will be profitable -- the other nine lose money. This is not because the record companies are poor judges of talent. It is simply that no one can predict with any degree of confidence which new recording artists will become popular, and which will not. The creative process is not scientific -- consumers' taste in music is not predictable. Even with established artists, there is no guarantee that a new release will sell as well as past releases. The record companies have succeeded in the past by promoting enough new artists to guarantee that at least one will be successful enough to repay the money invested in the less successful artists. Cutting costs by reducing artist rosters means that the record companies are, in effect, lowering their odds of finding the next big superstar and the next multi-platinum album on which their success depends.

Another way for the record companies to reduce costs is to cut marketing and promotion budgets. Again, however, this can prove self-defeating. There is a great deal of competition for the consumers' attention and for the consumers' entertainment spending. Sound recordings compete not only with each other, but with DVDs, games, and other entertainment options. In order to successfully market a sound recording to a mass market, a certain level of expenditure is necessary to obtain radio play, buy advertising, support concert tours, and promote the music through various on-line services. Cutting marketing expenditures across the board may simply guarantee that no sound recording succeeds, and no new artist becomes a brand name to music buyers. Selective cost-cutting is difficult because, as I noted above, there is no way for record companies to know in advance which new releases and new artists will succeed, and which will fail. The record companies therefore cannot selectively market only the sure "winners," because there are no sure winners.

Declining revenues due to the shift to digital distribution, therefore, may force cost-cutting that heightens the risks for the record companies. That cost-cutting also disserves music publishers and songwriters. Most of the sources of revenue earned by music publishers depend to a substantial degree on the creation and marketing of a sound recording by the record company. No one earns money on a musical work unless and until it is turned into a sound recording by a record company. If the record companies support fewer artists, release fewer sound recordings, or do not spend as much to market their sound recordings, record sales will decline and songwriters and music publishers will have less of an opportunity to earn mechanical royalties. And the same is true for performance royalties. Music does not get played on the radio (and thus does not earn performance royalties for the publishers and songwriters) unless the record companies first make all the investments necessary to record, produce, market, distribute and manufacture the sound recording. Indeed, although the music publishers earn performance royalties when musical works are played on radio, and the record companies do not, it is the record companies that spend the money to promote sound recordings embodying those musical works to the radio stations. Similarly, it is usually the record companies, and not the publishers, that support concert tours by the artists, again earning performance royalties for the music publishers but not for the record companies. Even synchronization rights royalties, merchandising royalties, and receipts from the sale of sheet music, are revenues that the music publishers earn in large part because the record companies made and marketed sound recordings that became popular with the public. Without the popular demand for the sound recording created by the record companies' investment, there would be little demand to use the underlying musical works in movies, television shows, commercials and merchandise. Nor would there likely be much of a market for sheet music if the public had never heard sound recordings containing the musical work.

The music publishers typically spend little or nothing to turn the musical works into a form that the public will actually buy. The record companies, not the music publishers, spend the money needed to turn the musical work into a sound recording, including the costs of compensating the recording artist(s), producing the sound recording, manufacturing physical products such as CDs, preparing the audio and artwork in digital form, preparing all the related metadata for digital (in all the various different formats required by each distributor), and the distribution of that product in both the physical and digital supply chains. The record companies, and not the music publishers, expend large sums of money to market and promote the sound recordings to consumers (and perhaps more importantly, to market and promote the artists who made the sound recordings). And the revenue earned by the music publishers – including not just mechanical revenue but also performance, synch and other forms of revenue – is largely a result of these investments by the record companies.

In short, the record company is the R&D engine of the entire industry. The record company has substantial overhead dedicated to finding the talent, overseeing the creative process and then marketing and promoting the sound recording in the marketplace. Whether we are in a physical world or a digital world, without R&D and the necessary investment, everyone else in the value chain will suffer: music publishers; songwriters; concert promoters; concert venues; concession owners; t-shirt manufacturers; and the list goes on and on. It may fairly be said that the primary business of the record company is R&D -- to invest the money necessary to find and market the next great artist. Whether or not digital distribution is more profitable than physical distribution misses the point. In the digital world, overall revenues for the record companies are dropping, which means less investment in R&D, fewer new artists and new releases, and therefore fewer revenues for everyone who earns money from the sale of music.

The money for higher mechanical royalties has to come from somewhere -- either record company profits or investment in other areas. Given the small profit margins of record companies today, there is little operating profit to spare, and a decline in profits will make record companies even less attractive as investments. The alternative is less investment in A&R, marketing, etc., which as discussed above makes less music available to the public, increases risk to record companies, and disserves the interests of the publishers.

C. The Record Companies Must Support Parallel Distribution Chains for Physical and Digital Sound Recording Sales, Which Becomes More Difficult as Revenues Decline.

The displacement of CD album sales by digital singles (as well as piracy) does not mean that the record companies should simply stop making CDs and sell only digital singles, even if the operating margin on digital singles exceeds the margin for CDs. The record companies need to continue to incur all the investments in recording, producing, marketing, distributing and manufacturing albums. That is how CDs are still sold, and although CD sales are declining, they still generate the bulk of the record companies' revenues. The record companies cannot afford to turn their backs on the consumers, the market place and the [[redacted]] in wholesale revenues they earned from CDs in 2006. At the same time, the record companies must sell their sound recordings in digital markets as well, because illegal peer-to-peer networks and other pirated digital music will fill the void if the record companies sell only physical products.

As a result, the record companies must continue to invest to bring the sound recordings to the consumer, through two markets, physical and digital, even though the latter may be cannibalizing the higher-revenue CD album market. The record companies must sign artists to album deals, and incur the costs associated with creating and selling a physical product, while at the same time incurring the separate and additional costs of operating a digital distribution channel, including IT infrastructure for distributing and collecting royalties, as well as staff to enable the digital transition.

The costs of these parallel distribution systems are being borne, however, by a shrinking revenue pool. Here again, the fact that digital distribution may provide operating margins higher than physical CDs, assuming that is in fact the case, does not mean that digital is a panacea. At least for the reasonably foreseeable future, the digital transition is causing overall revenues to drop, which makes it very difficult for the record companies to support the necessary costs of selling both physical and digital products.

The same cannot be said for music publishers. The music publishers do not incur any significant additional costs to accommodate the new digital markets. Since the record companies absorb all the costs of distributing sound recordings, whether in physical or digital form, the record companies have borne all the costs of creating the infrastructure to support digital distribution. In the digital world, the music publishers simply do what they have always done -- license musical works to record companies and let the record companies do the rest.

D. **In the Digital World, the Hits Sell Fewer Albums.**

As a number of record company witnesses have pointed out, it is not just slipping revenues that cause concern -- it is the fact that the record companies' best selling albums are experiencing a significant drop in sales. Earlier in this testimony I pointed out that the record companies invest far more in the creation of sound recordings than do the music publishers. When an artist fails, the music publisher may lose a small amount, but the record company will lose far more. Record companies have always counted on the fact that when an artist like James Blunt succeeds, they will make enough money to cover not only the substantial investment in Blunt, but also the investments in other artists whose albums did not succeed. In a sense, the record companies place very large bets, compared to the music publishers, and they need a superstar success every once and a while. The problem is that the amount of revenues earned from the superstars today is shrinking. And it is shrinking because of the digitization of music – because piracy and the ability to acquire digital singles reduces purchases of the hit albums that for years have fueled record company investment.

V. AN INCREASE IN THE MECHANICAL ROYALTY RATE WILL ADVERSELY AFFECT AVAILABILITY OF MUSIC, WHILE A DECREASE IN THE MECHANICAL ROYALTY RATE WILL HAVE LITTLE IMPACT ON MUSIC PUBLISHERS' INVESTMENTS.

All of the above discussion is simply to emphasize the different risk and reward models of the music publishing and recorded music businesses. In the decades before this proceeding, there has been a division of labor between record companies and music publishers – a bargain about who would perform the tasks to bring music to the public. Under that bargain, record companies undertake virtually all the investment and receive the vast majority of the compensation for sales of purchased music that incur mechanical royalties, while music publishers receive compensation from many sources, but at much lower levels for sales of purchased music. And the result of that division of labor is that, in the current environment with declining sales, prices, and revenues, and the additional costs of the transition to digital, it is the record companies that are suffering the most.

For the reasons I described above, it is important that the record companies continue to invest in new artists, new sound recordings, and the expenses necessary to market those artists and recordings to the public. As revenues from the sales of CDs drop faster than the increase in revenues from the sales of digital products, that investment is becoming harder to make. If mechanical royalties increase as well, as I understand the music publishers to be proposing, the investment in new sound recordings and new artists becomes that much more difficult to make, to the detriment of all -- record companies, music publishers, and consumers alike.

Conversely, however, a reduction in the musical works rate will have little impact on music publisher investment. Music publishers earn high profit margins, and even if the mechanical royalty rate is reduced, their margins will remain significantly positive. As Table A shows, [[redacted]][77] As these margin numbers suggest, music publishers are more than able to absorb a decrease in the mechanical royalty rate.

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77 Because the publishers produced a full set of financials for Warner/Chappell's worldwide operations but made only a partial production of financials showing the US operations, the chart in Table A for Warner/Chappell reproduces these worldwide numbers (the charts for the other publishers are for US only operations). However, in order that the reader may have access to as full a set of data as possible in one place, I have also included the information on Warner/Chappell's US operations within notes contained on the same table. The same is true for UMPG's final revenue and profit figures for 2006, which the publishers produced in a narrative only instead of producing a financial table presentation consistent with the format of the rest of the financials. Accordingly, I have not included the 2006 information within Table A itself, but I do mention those results in the Notes to that table.

To illustrate this point, I have shown in Table B the proforma impact of both the RIAA and NMPA proposal on several of the music publishers' 2006 US financials. The proforma impact of the RIAA proposal was done by adjusting the publishers' domestic mechanical revenues and royalties down by [[redacted]], to provide a rough estimation of the RIAA's proposal. For the proforma impact of the NMPA proposal, I adjusted each publishers' mechanical revenues (and corresponding royalty payments) upwards by [[redacted]], in order to roughly illustrate the impact of the NMPA's proposal.[78]

The results were revealing. As Table B shows, under the RIAA proposal, each of the music publishers would still have had more than enough revenues to cover its overhead and earn a healthy operating profit. [[redacted]][79]

Of course, I would emphasize that this proforma model considers only how changes in the statutory rate would affect the 2006 financials of these companies in a very direct sense, without taking into account any broader marketwide changes that might be caused by a reduction

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[78] A detailed explanation of how these figures were derived is set forth in the Notes to Table B.

[79] Because of limitations in the data, explained fully in the Notes to Table B, I was not able to fully model BMG MP and Warner/Chappell, and therefore they are not included here. Nonetheless, the nature of this proforma and the rough modeling I have done in connection with these companies makes clear that the results would not be significantly different for these companies if adequate data were at hand.

in the mechanical royalty rate. As I have explained elsewhere in this report, while a reduction in the mechanical royalty rates might cause a reduction in mechanical revenues to the music publishers in the short term, in the long term it would work to the benefit of everybody involved in this proceeding -- record companies and music publishers alike -- because record companies would be able to make the additional A&R investments necessary to create longterm growth in the music business.

Finally, the proforma impact of the NMPA proposal also shows that music publishers' profit margins do not change drastically. However, as Table B makes clear, the net effect of the music publishers' proposal would be to provide the music publishers with significant increases in their already healthy profits.

VI. CONCLUSION.

Recorded music is a high risk business with less stable revenue streams and large high risk investment requirements as contrasted with music publishing, which is an annuity-like business with stable revenue streams and small dollar and low risk investment requirements.

TABLE A: Music Publisher Historical Performance

BMG Music Publishing -- US All Figures in Euros (000)	2003		2004		2005		2006	
Revenue	[redacted]		[redacted]		[redacted]		[redacted]	
COGS	[redacted]		[redacted]		[redacted]		[redacted]	
NPS (% of revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Expenses and Miscellaneous:								
Marketing	[redacted]		[redacted]		[redacted]		[redacted]	
Provision Against Advances	[redacted]		[redacted]		[redacted]		[redacted]	
Depreciation of Rights and Licenses	[redacted]		[redacted]		[redacted]		[redacted]	
Depreciation of Sheet Music Rental	[redacted]		[redacted]		[redacted]		[redacted]	
Amortization and Impairments	[redacted]		[redacted]		[redacted]		[redacted]	
Other Cost of Sales	[redacted]		[redacted]		[redacted]		[redacted]	
SG&A	[redacted]		[redacted]		[redacted]		[redacted]	
Other Operating (Inc) / Decl	[redacted]		[redacted]		[redacted]		[redacted]	
TOTAL	[redacted]		[redacted]		[redacted]		[redacted]	
EBIT	[redacted]		[redacted]		[redacted]		[redacted]	
EBITDA (% of Revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Revenue Breakdown:								
Mechanical			[redacted]	[redacted]	[redacted]	[redacted]		
Performance			[redacted]	[redacted]	[redacted]	[redacted]		
Synchronization			[redacted]	[redacted]	[redacted]	[redacted]		
New Media			[redacted]	[redacted]	[redacted]	[redacted]		
Print			[redacted]	[redacted]	[redacted]	[redacted]		
Other			[redacted]	[redacted]	[redacted]	[redacted]		
TOTAL			[redacted]	[redacted]	[redacted]	[redacted]		

RESTRICTED

[redacted]

PUBLIC VERSION

EMI Music Publishing -- US
All Figures in $000

	2000/01		2001/02		2002/03		2003/04		2004/05		2005/06		2006/07	
Revenue	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
COGS	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
NPS (% of revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Expenses and Miscellaneous:														
Personnel	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Occupancy	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Depreciation	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Provision for Advances	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Advertising and Promotion	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Repertoire Expense	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Other Operating Expenses	[redacted]		[redacted]		[redacted]				[redacted]		[redacted]		[redacted]	
(Gain)/Loss on Disposal of Fixed	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Royalties & other claims provisions	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Other (Income)/Expense	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
TOTAL	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Profit Before Associate/Jt. Ventures	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Share of Associate Operating Profit	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Add back depreciation	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
EBITDA (% of revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Revenue Breakdown:														
Mechanical	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Performance	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Synch	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Other	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
TOTAL	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

RESTRICTED

PUBLIC VERSION

Sony/ATV -- US

All Figures in $000	2000/01		2001/02		2002/03		2003/04		2004/05		2005/06		2006/07	
Revenue	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
COGS	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
NPS (% of revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Expenses:														
Flat Expense	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]					
Provision for Advances	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Catalog Amortization	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Demo Costs	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Other Costs	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Marketing	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Departmental Costs/Overhead	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
TOTAL COST	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Profit	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Add Back of Amortization	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
EBITDA (% of revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Breakdown of Revenue:														
Domestic Mechanical	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
Domestic Performance	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
Domestic Synch	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
Domestic Print	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
Domestic Other	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
Foreign	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
TOTAL	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		

RESTRICTED [redacted]

PUBLIC VERSION

Universal Music Publishing -- US Figures in Euros 000's	**2000**		**2001**		**2002**		**2003**		**2004**		**2005**		**2006****
Revenues	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		
COGS	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		
NPS (% of revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
Expenses and Miscellaneous:													
Provision for Advances	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		
A&R / Publicity Direct Costs	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		
Other Overhead	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		
Sundry/Other	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		
TOTAL	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		
EBITDA (% of revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
Revenue Breakdown:													
Mechanical	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
Performance	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
Synch	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
Print	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
Other	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
TOTAL	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	

RESTRICTED

[redacted]

[redacted]

PUBLIC VERSION

Warner/Chappell -- WORLDWIDE **All Figures in $000**	**2000**		**2001**		**2002**		**2003**		**2004**		**2005**		**2006**	
Revenue	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
COGS	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
NPS (% of revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Expenses / Miscellaneous														
Advance Writeoffs	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Other A&R Costs	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Marketing Costs	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Overhead	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Other (Income)/Expense	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
TOTAL	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
OIBDA (% of revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Amortization	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Depreciation	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
OIADA	[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]		[redacted]	
Revenue Breakdown														
Mechanical	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Performance	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Synch	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Digital		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Other	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
TOTAL	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

RESTRICTED

[redacted]

PUBLIC VERSION

NOTES TO TABLE A

1. The financial information presented is the financial results for the US operations of each global publisher with the exception of Warner-Chappell, for which worldwide consolidated results are presented.

2. Amounts for revenue included in the financial results presented are the revenue from all sources as a result of exploitation of copyrights owned or administered/represented by the U.S. companies including the revenue from exploitation of those copyrights outside the United States. This is consistent with the recording and treatment of those revenues by each of the music publishers in their financial information provided.

3. The financial information was derived from various sources provided in discovery from the publishers, including but not limited to internal management reporting, internal general ledgers, and internal financial or budget presentations. The financial information was not derived from audited financials reported on by an independent accounting firm. The basis of preparation of the financials may vary from publisher to publisher depending on a number of factors, including: whether publishers follow U.S. GAAP versus international accounting standards, whether publishers follow accrual basis of accounting versus cash basis of accounting, and whether publishers are in compliance with Financial Accounting Standard Number 50 – Accounting for Artist Advances. While the standards followed may differ, each publisher would be matching revenue and expenses in any given year presented in accordance with either U.S. or international accounting standards. Therefore, results for each given publisher should be consistent from one year to another under the accounting principles applied by that publisher for each of those years.

Notes To BMG Music Publishing Spreadsheet

1. BMG Music Publishing (BMG MP) follows the calendar year for financial reporting purposes.

2. 2003-2006 information is taken from the BMG-Zomba United States summary page for "All Businesses" in the Management Books produced by BMG MP. Management Books for 2003, 2004 and 2006 were produced in native form on Copyright Owners' Production Disc 21. The Management Book for 2005 was produced in hard copy at CO05007882.

3. Revenues, information on the breakdown of revenue by type, and line items for each expense and miscellaneous item are drawn directly from the documents.

4. Cost of Goods Sold (COGS) is computed by adding the "royalty expense" and any "cost of sales" line items, and then deducting for the "UK International Addback" shown on the financials.

5. Net Publishers Share (NPS) is calculated as Revenues minus COGS and is checked for consistency with the NPS figure provided on the document.

6. EBIT is calculated as NPS minus expenses and miscellaneous and is checked for consistency with the EBIT figure provided on the document.

7. For 2004 through 2006, EBITDA is taken directly from the financials. For 2003, the financials do not calculate an EBITDA, but they do provide an EBIT, so amortization and depreciation were added back in to calculate an EBITDA. (Using this method would have resulted in an EBITDA calculation that is identical to the EBITDA shown on the 2004 financials, and slightly lower than the EBITDA shown on the 2005 and 2006 financials. Thus, this method appears conservative.)

8. Information on the breakdown of lines of revenue for 2004 and 2005 is taken from CO05005719, at 05005713. (The most readable version of this document is that used as Exhibit 9 to the deposition of Nicholas Firth.)

9. In addition to the information shown on this chart, BMG MP also provided results for 2002, the final year before the acquisition of Zomba Publishing by BMP MP's parent company, Bertelsmann AG. Those results, reported as historical results in the KPMG memorandum for the year ended December 31, 2003, showed total revenues of [[redacted]], and [[redacted]]. (CO, at 05004735, at 05004739.) When depreciation and amortization are added back in, EBITDA is calculated at [[redacted]].

Notes To EMI Music Publishing Spreadsheet

1. Amounts presented in this spreadsheet are taken from the EMI Music Publishing (EMI MP) financial information produced in discovery (RIAA Trial Ex. 8; CO04024775). EMI MP reports on a fiscal year basis ended March 31; therefore, the last year shown (2006/07) is for the year ending March 31, 2007.

2. Revenue is taken from line 2080000 on page 04024777.

3. Cost of Goods Sold (COGS) is taken from line 2105000 on page 04024778.

4. Net Publisher Share (NPS) is computed as Revenue minus COGS and is checked for consistency with line 2110000 on page 04024778.

5. Expenses and Miscellaneous are drawn from lines 2123000 through 2141300 on page 04024778.

6. Profit Before Associate/Joint Ventures is computed as NPS minus Expenses and Miscellaneous and is checked for consistency with line 2152000 on page 04024778.

7. Share of Associate Operating Profit is taken from line 2152100 on page 04024778.

8. EBITDA is calculated by totaling the Profit Before Associate/Joint Ventures and the Share of Associate Operating Profit and then adding back the expense for depreciation (taken from line 2126100 on page 04024778). This figure is confirmed to match the EBITDA value given for 2007 in the "Memorandum: EBITDA" line (line 2260000 on page 04024778).

9. Information on revenue breakdown is taken from lines 2040000, 2050000, 2052000, and 2051000 on page 04024777.

Notes To Sony/ATV Spreadsheet

1. Amounts presented in this spreadsheet are taken from the "Sony Music Publishing" financials provided in discovery (bates range CO07004883-CO07004925). Sony/ATV reports on a fiscal year ending March 31; therefore, the last year shown (2006/07) is for the year ending March 31, 2007.

2. Sony/ATV is a joint venture between Sony Music Publishing and Michael Jackson (see Notes to the Consolidated and Combined Modified Cash Basis Financial Statements of Sony/ATV Music Publishing LLC for the year ended March 31, 2007, produced in discovery at CO07007429, page 6). However, notwithstanding their designation as "Sony Music Publishing" documents, I believe that the figures in this document are intended to reflect the US results for the Sony/ATV venture for two reasons. First, I compared the figures in the Sony Music Publishing financials to the revenue and royalty figures for FY1998 through FY2006 that are contained in the document entitled "Sony/ATV US Revenue & Royalty Costs" (produced in discovery at CO07014022). The figures in these documents are virtually identical, in most cases varying by only a nonmaterial amount. Second, I compared the figures in these documents to the figures in the Sony/ATV US financials for 2003/04 and 2004/05 attached to an email from Steven Storch to Amy Pugh (produced in discovery at CO07007267). Although revenues are broken down differently in the two documents, the core figures for revenue, royalty expense, and NPS are comparable for both years.

3. For all years, total revenues are taken from the corresponding revenue line items indicated on the financials.

4. For the years 2000/01 to 2004/05, Cost of Goods Sold is provided as a combination of the "royalty exp-publishing" and "royalty exp-masters" line items. For the years 2005/06 and 2006/07, COGS is taken from the "royalty expense" line on the financials.

5. Expenses are provided as they are listed on the financials provided in discovery. The line item for "Departmental Costs / Overhead" refers to the item denominated "Departmental Costs" in the 2000/01 - 2004/05 financials and "Organizational Expenses" in the 2005/06 - 2006/07 financials.

6. Profit is provided as Net Publisher Share minus expenses and it is checked to match the line item for "pre-tax contribution" in the 2000/01 - 2004/05 financials and the line item for "operating profit" in the 2005/06 - 2006/07 financials.

7. For 2000/01 - 2004/05, domestic mechanical revenue is provided as a combination of the "domestic mechanical royalties" line item as well as the "CHC mechanical royalty" and "SMU mechanical royalty" line items.

8. For 2000/01 - 2004/05, "other" domestic revenues are provided as a combination of the "production income", "masters income", and "all other" line items.

9. For 2000/01 - 2004/05, foreign revenue is provided as a combination of external foreign royalties and internal foreign royalties.

10. Breakdowns of revenue are not shown on the 2005/06 and 2006/07 financials. However, for 2005/06, the revenue breakdown is derived from the Sony/ATV US Revenue & Royalty Costs discussed above (CO07014022). The total 2005/06 revenue shown on this document, [[redacted]], differs slightly from the total revenue of [[redacted]] in the financials. However, this small difference should not affect the relative percentages of revenue in that year.

11. Foreign revenue is shown as a separate category in the 2000/01 - 2004/05 financials, rather than being broken down into its constituent components. However, the Sony/ATV US Revenue & Royalty Costs document (CO07014022) does break down foreign revenue into mechanicals, performance, and synch revenue for each of the years 2003/04-2005/06. Adding those figures to the domestic figures shown on the same document, the total mechanical revenues earned in those years is [[redacted]].

Notes To UMPG Spreadsheet

1. Universal Music Publishing Group (UMPG) follows a calendar year for financial reporting since 2001.

2. Information for 2000-2005 is taken from the "US-Publishing" page of the document entitled "Universal Music Publishing Group Financial Report" provided on an annual basis for each of those years (2000-2001: CO09007805, at 09007871; 2002: CO09007668, at 09007728; 2003: CO09009185, at 09009259; 2004: CO09008866, at 09008947; 2005: CO09009013, at 09009094). This document provides a financial report on the consolidated operations of UMPG as well as regional and territorial breakdowns.

3. Revenues, cost of goods sold (COGS) and line items for each expense and miscellaneous item are drawn directly from the consolidated reporting document.

4. Net Publishers Share (NPS) is calculated as Revenues minus COGS and is checked for consistency with the NPS figure provided on the consolidated reporting document.

5. Provisions for advances are presented in as a negative for 2001-2005 because in each of these years, UMPG appears to have recouped on amounts previously written off.

6. EBITDA is calculated as NPS minus expenses and miscellaneous and is checked for consistency with the EBITDA figure provided on the consolidated reporting document

7. Information on the breakdown of revenues by type is taken directly from the reporting document for the years 2002-2005. For 2000 and 2001, this information is not provided on the "Financial Report" document. Accordingly, this information is taken from the Financial Report of Analytics and Narratives for Consolidation for CY2001. CO09011621, at page 09011655. The total revenue figures on this FRANC document are [[redacted]] but there is no evidence that this discrepancy would affect the relative percentages of the lines of revenue.

8. I also note that the narrative in the March Forecast – 2007 (CO09014261, pages 4 and 5), contains final 2006 figures and 2007 forecast figures for overall revenue and EBITDA. These figures, which are presented in dollars and therefore not included in Table A, are [[redacted]].

<u>Notes To Warner/Chappell Music Spreadsheet</u>

1. Warner/Chappell Music's fiscal year has ended in September since its acquisition by a private investor group in 2004.

2. All consolidated (worldwide) information on this spreadsheet is taken from the document produced in discovery entitled "Warner/Chappell Music Consolidated Statement of Operations – Consolidated FY99-08" (CO08003872).

3. Warner/Chappell did not produce financials statements for its US operations. However, information showing certain of Warner/Chappell's core US financial information was produced for certain years, including 2003 (CO08001386 and CO08001345), 2004 (CO08001345), and 2006 (CO08005707).

TABLE B: ProForma Music Publisher Financials

EMI Music Publishing -- US Figures in $000	2006/07 Actual		2006/07 RIAA Proposal		2006/07 NMPA Proposal	
Adjustment Factor:			[redacted]		[redacted]	
External Mechanical Revenue	[redacted]		[redacted]		[redacted]	
Intra Mechanical Revenue	[redacted]		[redacted]		[redacted]	
Total Mechanical Revenue	[redacted]		[redacted]		[redacted]	
Royalty Expense-Mechanicals	[redacted]		[redacted]		[redacted]	
Royalty Expense Intra-Grp-Mechanicals	[redacted]		[redacted]		[redacted]	
Total Mechanical Royalty Expenses	[redacted]		[redacted]		[redacted]	
Mechanical NPS (% of Revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total Performance Revenue	[redacted]		[redacted]		[redacted]	
Total Performance Royalty Expenses	[redacted]		[redacted]		[redacted]	
Performance NPS (% of Revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total Synch Revenue	[redacted]		[redacted]		[redacted]	
Total Synch Royalty Expenses	[redacted]		[redacted]		[redacted]	
Synch NPS (% of Revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total Other Revenue	[redacted]		[redacted]		[redacted]	
Total 'Other' Royalty Expenses	[redacted]		[redacted]		[redacted]	
Other NPS (% of Revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total Revenue	[redacted]		[redacted]		[redacted]	
Total Expenses	[redacted]		[redacted]		[redacted]	
Net Publisher share (% of Revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Costs						
Personnel	[redacted]		[redacted]		[redacted]	
Occupancy	[redacted]		[redacted]		[redacted]	
Depreciation	[redacted]		[redacted]		[redacted]	
Provision for Advances	[redacted]		[redacted]		[redacted]	
Advertising and Promotion	[redacted]		[redacted]		[redacted]	
Repertoire Expense	[redacted]		[redacted]		[redacted]	
Other Operating Expenses	[redacted]		[redacted]		[redacted]	
(Gain)/Loss on Disposal of Fixed Assets	[redacted]		[redacted]		[redacted]	
Royalties & other claims provisions	[redacted]		[redacted]		[redacted]	
Others	[redacted]		[redacted]		[redacted]	
Total Costs	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Net Profit - Before Associate/Jt. Ventures	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Share of Associate Operating Profit	[redacted]		[redacted]		[redacted]	
Add back depreciation	[redacted]		[redacted]		[redacted]	
EBITDA (% of revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

RESTRICTED

Sony ATV - USA Figures in $000	FY2006/07 (Forecast)		FY2006/07 RIAA Proposal		FY2006/07 NMPA Proposal	
Adjustment Factor:			[redacted]		[redacted]	
Mechanical Revenue - Local	[redacted]		[redacted]		[redacted]	
Mechanical Revenue - Foreign	[redacted]		[redacted]		[redacted]	
Total Mechanical Revenue	[redacted]		[redacted]		[redacted]	
Royalty Expense - Mechanical (Local)	[redacted]		[redacted]		[redacted]	
Royalty Expense - Mechanical (Foreign)	[redacted]		[redacted]		[redacted]	
Total Mechanical Royalty Expenses	[redacted]		[redacted]		[redacted]	
Mechanical NPS (% of Revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Performance Revenue (Local)	[redacted]		[redacted]		[redacted]	
Performance Revenue (Foreign)	[redacted]		[redacted]		[redacted]	
Synch Revenue (Local)	[redacted]		[redacted]		[redacted]	
Synch Revenue (Foreign)	[redacted]		[redacted]		[redacted]	
Other Publishing Income	[redacted]		[redacted]		[redacted]	
Total Non-Mechanical Revenue	[redacted]		[redacted]		[redacted]	
Total Non-Mechanical Royalty Expenses	[redacted]		[redacted]		[redacted]	
Non-Mechanical NPS (% of Revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total Revenue	[redacted]		[redacted]		[redacted]	
Total Expenses	[redacted]		[redacted]		[redacted]	
Net Publisher share (% of Revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Expenses:						
Flat Expense						
Provision for Advances	[redacted]		[redacted]		[redacted]	
Catalog Amortization	[redacted]		[redacted]		[redacted]	
Demo Costs	[redacted]		[redacted]		[redacted]	
Other Costs	[redacted]		[redacted]		[redacted]	
Marketing	[redacted]		[redacted]		[redacted]	
Departmental Costs/Overhead	[redacted]		[redacted]		[redacted]	
Total Costs	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Profit	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Addback Amortization	[redacted]		[redacted]		[redacted]	
EBITDA (% of revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

RESTRICTED

Universal Music Publishing Group - US Figures in Euros (000s)	**2006 Forecast**		**2006 RIAA Proposal**		**2006 NMPA Proposal**	
Adjustment Factor			[redacted]		[redacted]	
Local Earnings - Local Deals	[redacted]		[redacted]		[redacted]	
Local Earnings - Foreign Deals	[redacted]		[redacted]		[redacted]	
Foreign Earnings - Local Deals	[redacted]		[redacted]		[redacted]	
Total Mechanical Revenue	[redacted]		[redacted]		[redacted]	
Royalty Expenses - Local/Local	[redacted]		[redacted]		[redacted]	
Royalty Expenses - Local/Foreign	[redacted]		[redacted]		[redacted]	
Royalty Expenses - Foreign/Local	[redacted]		[redacted]		[redacted]	
Total Mechanical Royalty Expenses	[redacted]		[redacted]		[redacted]	
Total Mechanical NPS (% of Revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Local Earnings - Local Deals	[redacted]		[redacted]		[redacted]	
Local Earnings - Foreign Deals	[redacted]		[redacted]		[redacted]	
Foreign Earnings - Local Deals	[redacted]		[redacted]		[redacted]	
Total Digital Revenue	[redacted]		[redacted]		[redacted]	
Royalty Expenses - Local/Local	[redacted]		[redacted]		[redacted]	
Royalty Expenses - Local/Foreign	[redacted]		[redacted]		[redacted]	
Royalty Expenses - Foreign/Local	[redacted]		[redacted]		[redacted]	
Total Digital Royalty Expenses	[redacted]		[redacted]		[redacted]	
Total Digital NPS (% of Revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total Performance Revenue	[redacted]		[redacted]		[redacted]	
Royalty Expense - Performance	[redacted]		[redacted]		[redacted]	
Performance NPS (% of Revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total Synch Revenue	[redacted]		[redacted]		[redacted]	
Royalty Expense - Synch	[redacted]		[redacted]		[redacted]	
Synch NPS (% of Revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total Print Revenue	[redacted]		[redacted]		[redacted]	
Royalty Expense - Print	[redacted]		[redacted]		[redacted]	
Print NPS (% of Revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total Other Revenue	[redacted]		[redacted]		[redacted]	
Royalty Expense - Other	[redacted]		[redacted]		[redacted]	
Other NPS (% of Revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total Revenue	[redacted]		[redacted]		[redacted]	
Total Royalty Expenses	[redacted]		[redacted]		[redacted]	
Net Publisher share (% of Revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Expenses and Miscellaneous:						
Provision for Advances	[redacted]		[redacted]		[redacted]	
A&R / Publicity Direct Costs	[redacted]		[redacted]		[redacted]	
Other Overhead	[redacted]		[redacted]		[redacted]	
Sundry/Other	[redacted]		[redacted]		[redacted]	
Total Costs	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
EBITDA (% of revenue)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

RESTRICTED

NOTES TO TABLE B

1. The proforma financial statements are intended to illustrate the effect on the 2006 financials of the music publishers under the RIAA proposal; and the effect under the NMPA proposal. They are intended to give the Court an indication of the rough order of magnitude of the impact of the RIAA and NMPA proposals on the music publisher financials.

2. In order to estimate the impact of the RIAA's proposal on the 2006 financials of the music publishers, I used RIAA data on net shipments (RIAA Net Shipments, Direct & Special Markets and Digital Distribution, Gross Shipments and Return: All Discs and Cassettes, For the Year Ending December 31, 2006) to calculate the impact on the four main product groups that collectively make up a total of about [[redacted]] of net shipments: CDs, digital album downloads, digital singles downloads, and ringtones. In addition, because the low wholesale price of cassettes would result in a more significant decline in the mechanical royalty payments to music publishers under the RIAA's proposal, out of an abundance of caution I included those in my calculations as well (although cassettes make up an extremely small percentage of today's music market).

3. [[redacted]]

4. Although some variances are to be expected between publishers based on differing mixes of revenue, a weighted average of those four categories implies an industrywide average of a roughly [[redacted]] percent reduction in mechanical royalty revenues under the RIAA's rate proposal. Using a similar methodology, I estimate that the NMPA's rate proposal would increase the average mechanical revenues of the publishers by roughly [[redacted]] percent. To be conservative, I used as the basis of my model an estimate that the RIAA's proposal would cause a [[redacted]] decrease and the NMPA's proposal would cause a [[redacted]] increase.

5. Once these figures were calculated, I showed the proforma impact of this adjustment on the 2006 financials for the US operations of each publisher (taking either actual year-end financials or mid-year forecasts, depending on the quality of the data I had available) by making adjustments in the domestic mechanical revenues and domestic mechanical royalty payments for each publisher. I left all other information in the model the same, including data on foreign mechanical revenues, other sources of revenue (ie. performance, synch, etc) and information on expenses. This allowed me to isolate the impact of changing domestic mechanical royalty rates on the overall financials of each music publisher.

6. As I indicated above, in the case of two publishers – UMPG and Sony/ATV – I have had to use mid-year forecast data for 2006 rather than the final financial results for each year. This is because the forecast data is the only data provided by the publishers in discovery that shows a breakdown of royalty payments by line of revenue – a necessary element to this calculation. However, in each case, as explained below, I have compared the forecast numbers against the actual reported results for each year and there is no reason to think that using final results, had I been able to do so, would have changed the basic conclusions shown by model. In fact, in each case the forecast numbers proved conservative.

7. To reduce complexity in the model I have used industrywide figures to calculate the relative weight that each product (CDs, online albums, online singles, ringtones and cassettes) has in the calculation of the

average impact of the RIAA/NMPA proposals. Due to differing product mixes there may be minor variations from publisher to publisher in the relative weight that each line of revenue may have. As my model shows, however, variations of this magnitude have no impact on the general overall outcome of the proforma presented here.

8. In calculating the impact of the RIAA/NMPA proposals I have looked only at the five products that make up the vast majority – about 95 percent – of net sales (whether measured as a function of unit sales or wholesale revenues). This necessarily excludes some products such as DVD audio, CD and LP singles, and the like. These products made up only a small percentage of net sales in 2006 and in light of the wholesale prices of these products, their exclusion is unlikely to affect the general conclusions yielded by this proforma.

9. Some variances are also possible due to the manner in which the publishers have classified certain forms of publishing income. For example, as I have noted in the text of my testimony, [[redacted]]. However, as a simple manipulation of the proforma makes clear, even if this ringtone income were all treated as mechanical income for the purpose of the proforma, it would not have any more than a minor effect on the results.

10. One factor that is not shown in this proforma is the potential impact on advance writeoffs of a decline in mechanical royalty revenues. If the music publishers sustain a longterm decrease in their mechanical revenues, there is certainly some possibility that they may have to write off more of their advances in the future. However, I doubt that the impact of this would be very large because, as I have shown, the publishers have typically been able to recoup a very large (in many cases [[redacted]]) portion of their advances, and their earnings from other lines of revenues should be sufficient to enable them to maintain high recoupment rates. Moreover, as I note in my testimony, growth in the overall music market caused by additional record company A&R investments would likely mitigate this impact altogether.

11. I should note that this proforma is also extremely conservative in one aspect, in that it models only the short-term, direct impact of a mechanical royalty rate change without modeling the broader impact on music publishers from marketplace changes arising from reduced royalty rates. As I have noted in my testimony, a lower mechanical royalty rate will free record companies to make more of the A&R investments and other expenditures that have historically been the engine of the music industry – and that will, in turn, work to the benefit of record companies and music publishers alike.

Additional Notes Specific To EMI Music Publishing

1. All data is derived from the actual year-end financials produced by EMI MP (RIAA Trial Ex. 8; CO04024775). FY2006/07 data was used because the majority of the revenue earned during this year (nine months' worth) would have been earned in the calendar year 2006.

Additional Notes Specific To Sony/ATV Music Publishing

1. Because the year-end financials produced by Sony/ATV in discovery do not provide a breakdown of royalty or revenue costs, I used midyear forecast data contained in the document entitled "Fiscal 2007 Full Year Forecast & Fiscal 2008 Budget – Revenue Detail." This document provides FY 2006/07 US forecast figures with revenue and royalty payments broken down by type of revenue. (CO07006752, at 07006753, 07006755.)

2. As with EMI MP, FY2007 data was used because the majority of the revenue earned during this year (nine months' worth) would have been earned in the calendar year 2006.

3. The total revenue and operating income (EBIT) shown on this forecast, [[redacted]], respectively, proved to be conservative: in fact, as shown on Table A to my testimony, the final year-end financials for FY 2006/07 showed revenues of [[redacted]].

Additional Notes Specific To UMPG

1. 2006 UMPG forecast data is taken from the Universal Music Publishing Group Plan Pak 2007 United States, CO09011043. Pages 09011076-09011077 show 2005 actual and 2006 projected (as well as 2007 plan) revenue broken out by type of revenue.

2. This document presents figures in Euros and dollars. Figures are taken in Euros for consistency with the presentation in Table A.

3. This document presents revenue broken down into three categories: (1) "Local Earnings – Local Deals"; (2) "Local Earnings – Foreign Deals"; and "(3) Foreign Earnings – Local Deals". For purpose of this calculation I assumed that changes in the Section 115 mechanical royalty rate would impact on categories (1) and (2), but not (3).

4. The total revenue and EBITDA forecast for 2006 are shown on this forecast, in both Euros and dollars, at pp09011047-1047. In dollars, this document projects revenues of [[redacted]]. These projections proved to be conservative: in fact, as shown on Table A, documents produced in discovery noted final year-end revenues of [[redacted]].

Additional Notes Specific To BMG MP and Warner/Chappell

1. I was not able to create similar tables for BMG MP or Warner/Chappell. In the case of BMG MP, no information was produced to show domestic and foreign revenues broken out separately. In the case of Warner/Chappell, no data was produced that shows mechanical royalty payments, either domestic or foreign.

2. Nonetheless, on the basis of some simple calculations and a rough proforma that I have created using the information that was provided for these companies, I am confident that the impact of the RIAA and NMPA's rate proposals on BMG MP and Warner/Chappell would not vary greatly from the impact on the other three major publishers shown in this proforma.

APPENDIX

Resume of Terri M. Santisi

Terri Santisi
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terri@tmsillc.com

Professional Experience:

IMG — **New York, NY**
EVP, CFO and Chief Administrative Officer — ***Nov. 2006 – Dec. 2007***

- Oversaw IMG's worldwide operations in corporate development, mergers and acquisitions, finance and accounting, information technology, administration, human resources, corporate communications and public relations, as well as risk management and legal affairs to support the businesses with in excess of $1billion in revenues.
- Managed, enhanced and built corporate functions:
  - Established Financial Planning and Analysis Group
  - Developed Global Deal Process for all acquisitions, joint ventures and rights acquisitions defining standard criteria for evaluation of deals by business units and execution of multi-disciplinary teams to address due diligence and post merger integration issues; and status reporting to senior executive team
  - Led the restructuring of the Global Media operations into five distinct operating verticals to provide transparency and established economic metrics
  - Established a Tax and Treasury Operation in New York
    - Worked with our financial institutions to obtain additional financing to support our acquisition strategy
    - Developed cash management reporting
  - Established through outsourcing an Internal Audit Function
    - Developed accounting Policy and Procedure Manual
    - Developed delegated level of authority matrix
    - Reviewed SAP global general ledger to purge chart of accounts and enhance management reporting
- Led the financial and legal due diligence for six acquisitions for a total of $240 million including add on acquisitions for existing business unit verticals and new business (College Sports) consistent with the strategic plan of the company
  - Prepared acquisition analyses and reports for Board approval
  - Negotiated various financial, operating and legal deal points with representatives of the target company
- Led the due diligence with outside advisors for an additional $120 million capital raise from our investors
- Supervised budgeting, forecasting and management reporting process for the company, including the active review of business units' capital and expense requests and the preparation of long and short-term budgets

  - Established more informative quarterly and plan disclosures to provide transparency for each business segment within each of the units (Sports and Media)
- Developed Board presentations and participated in Board meetings and served as the company's representative to the senior management, investors, outside auditors, banks, law firms, and other groups receiving financial information.
- Reported all relevant and legally required financial information to all appropriate entities.
- Managed and continued to build the Human Resources, Information Technology and Legal Departments.
  - Held the first global legal summit in nine years with 40 attorneys from around the world and outside counsel
  - Negotiated terms of employment agreements for key executives
  - Established and executed a global performance review and bonus process for over 2600 employees around the world without an HRIS
- Provide proactive recommendations on how best to improve financial, managerial and operational performance including contributing to evolving strategic business plan.
- Established new Corporate Communications Group
  - Recruited experienced consultant to work with Executive Team and developed global communications plan including corporate messages
  - Planned and executed town hall meetings in NY, Cleveland and London for senior executives to discuss state of the business with 2600 employees

Interpublic Media	**New York, NY**
CFO	***September 2005-Oct 2006***

- Lead all financial operations for Interpublic Media, a division created in 2006 to consolidate the media planning, buying and market activation businesses of The Interpublic Companies.
- Part of the senior management team charged with turning the business around, developing and implementing a metric based, results oriented culture and processes including team approach to problem solving.
- Accomplishments:
  - Established management reporting for new business unit
  - Worked with other divisions of parent company on major multi-disciplinary pitches
  - Partnered with Corporate Strategic Group to re-evaluate the strategy of IPG Media resulting in a change in strategic direction to more effectively meet the current market dynamics

KPMG	**New York, NY**
Partner, Media and Entertainment Practice	***1999 – September 2005***

- Responsible for leveraging KPMG's Media and Entertainment Group and strengthening the firm's position as a global provider of professional services to this segment of the industry.
- Developed and implemented strategies for growth and change in the media and entertainment industry.

- Increased profitability in creatively driven business through innovative leadership and analysis directed at key business drivers.
- Worked on specific client projects in media industry, including a business transformation and strategic assessment review for a major music association, transaction advisory work for several media companies – advising on transactions from $100 million to in excess of $1 billion, led Sarbanes Oxley initiative for a major music company.
- Led thought leadership efforts of the firm in the areas of media and digital transformation; authored white papers on several media subject matters
- Partner to the World Economic forum on the Media Governors Meetings
    - Set Annual Media Governors Agenda
    - Contributed to the Digital Ecosystem Study

EMI-Capitol Music — **New York, NY**
EVP & GM, EMI-Capitol Music Group, North America — ***1992 – 1998***

- Led strategy development and oversaw day-to-day operations for nine North American record labels.
- Responsible for the sales, marketing and distribution operation, as well as the manufacturing organization.
- Structured major artist and promotional deals and evaluated the viability of new business opportunities.
- Key businesses included Capitol, EMI, The Enclave, Capitol Nashville, EMI Latin, Blue Note and Angel/EMI Classics/Virgin Records.
- Restructured EMI Music Sales and Distribution reducing costs by $4 million and developing a strong consumer focus in partnership with trade achieving a greater responsiveness to local market opportunities.
- Developed and managed the execution of a multimedia marketing and entertainment event to launch a new Garth Brooks album and exploit his catalog of prior releases. Worked with the City of New York and HBO to develop the Garth Brooks live show in Central Park and the HBO Cable Television event.
- Renegotiated rights to Beatles' BBC tapes and "Anthology" audio and video series, greatly increasing revenue-generation potential; the "Anthology" collections sold 13.7 million units, resulting in $411 million in new sales.
- Created new executive team; recruited and developed an excellent staff of business-savvy individuals including CFO, legal counsel and human resources, strategic planning, operations and marketing executives.

EMI Music Publishing Worldwide/SBK Records — **New York, NY**
SVP & CFO — ***1989 – 1992***

- Led the financial operations of the world's largest music publishing company.
- Integrated the former CBS songs into EMI globally, thus maximizing all methods of music exploitation.
- Built a global infrastructure for the newly merged, rapidly growing music publishing company, which greatly increased net publisher's share.
- Oversaw royalty, licensing and administration including review of songwriter agreements and royalty statements for all significant songwriters and catalogs prior to distribution to royalty participants
- Successfully negotiated the acquisition of Filmtax Music as well as re-negotiated a long-term administration deal for the Jobete Music catalog.

- Negotiated a complex earn-out for partners of the SBK Records start-up, significantly increasing their return.

Ernst & Young — **New York, NY**
Principal/Partner — ***1976 – 1989***

- Provided strategic business and financial advice to senior executives of Fortune 500 companies (i.e., The McGraw-Hill Companies and Mobil Oil Corporation).
- Served as the Media Industry Group Leader and coordinating partner for EMI Music Worldwide, McGraw-Hill Corporation, ASCAP and the National Music Publishers Association.
- Played a major role in the acquisition strategy of music and print publishing companies by leading industry conglomerates. This included the development of a sophisticated formula for the purchase of music publishing copyrights, which provided the acquirer with an appropriate measure of value.
- Gained significant global business and finance experience through her involvement as principal/partner who oversaw international marketing and refining operations of Mobil Oil.

<u>Education/Certification</u>

Bachelor of Science, Business/Accounting, Boston College, *magna cum laude*, 1976
Certified Public Accountant, New Jersey and New York State Society of CPA's

<u>Community Involvement</u>
New York City Outward Bound Board of Directors and the Executive Committee
Audit Committee, National Academy of Television Arts and Science
She Made It Steering Committee of the Paley Media Center

I declare under penalty of perjury that the foregoing testimony is true and correct.

Terri M Santisi

Terri M. Santisi

Date: May 1, 2008